IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 9 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL TARACHAND

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 9 of 1988
MR RK PATEL for Petitioner No. 1
MR AKIL KURESHI with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for the opinion of this Court in respect of assessment year 1973-74 relevant to previous year ending S.Y. 2028 :-

"(1) Whether, the amount received on acquisition of agricultural land was exigible to capital gains tax ?

(2) Whether, the amount received as `solatium' formed a part and parcel of the compensation received on acquisition of agricultural land and accordingly taxable as capital gains ?

(3) Whether, the provisions of section 147(a) had been rightly invoked by the ITO ?"

2. We have heard Mr RK Patel, learned counsel for the assessee and Mr Akil Kureshi, learned counsel for the revenue.

3. The assessee in this case is an individual, and the assessment year involved is 1973-74 with the previous year ending S.Y. 2028. The assessee's method of accounting is `Mercantile'. The original assessment had been finalized by the Income-tax Officer on 18.2.1974 under Section 143(1) accepting the returned income of Rs.25,157/-. This comprised of property income and business income. The Income-tax Officer while completing the case for assessment year 1975-76 found that the assessee had received certain compensation during that year in respect of land which had been acquired on 22.10.1972 a date which pertained to assessment year 1973-74. According to the Income-tax Officer, since the assessee was following the mercantile system of accounting, the capital gain in respect of the transaction fell for consideration in assessment year 1973-74. He accordingly resorted to the provisions of Section 147(a) and reopened the case. At this stage, it would not be out of place to mention that prior to the issue of the notice under Section 148 by the Income-tax Officer the assessment order for assessment year 1975-76 was the subject matter of an appeal before the AAC. The AAC vide his order dated 28.8.1981 categorically held that the capital gains on the land in question had arisen to the assessee in assessment year 1973-74 and not 1975-76. He accordingly deleted the same in assessment year 1975-76. In the absence of any submissions to the contrary by the parties, we presume that the aforesaid order of the AAC was not challenged in further appeal by

the parties.

4. The Income-tax Officer in the re-assessment proceedings accordingly brought to tax the capital gain in respect of the transaction quantified by him at a figure of Rs.1,39,908/-. The assessee challenged the action of the Income-tax Officer before the Commissioner of Income-tax (Appeals) on identical grounds as have been reproduced by the Tribunal and which were also the subject matter of the appeal before the Tribunal. The Commissioner of Income-tax (Appeals) rejected the contentions urged on behalf of the assessee on all the counts and dismissed the appeal.

5. Coming to question No. 1, the Tribunal decided the controversy on the basis of the decision of this Court in Ambalal Maganlal vs Union of India, 98 ITR 237 and held that the amount received on acquisition of the agricultural land in question was exigible to capital gains tax. The Tribunal did not accept the principle invoked by the assessee on the basis of the decision of the Bombay High Court in Manubhai A. Sheth vs. N.D. Nirgudkar, 128 ITR 87. Subsequently on account of the decision of the Bombay High Court in Manubhai A. Sheth's case (Supra), an explanation was added by the Finance Act, 1989 with effect from 1.4.1970 to clause (1A) of Section 2 of the Income-tax Act, 1961 which read thus :

> "Explanation.- For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section."

The aforesaid amendment came up for consideration before the Apex Court in Singhai Rakesh Kumar vs. Union of India, (2001) 247 ITR 150 wherein the constitutional validity of this provision was also challenged. The Apex Court upheld the power of the Parliament to make such an explanation and to define what agricultural income is. The legal position has been summed up by the Apex Court in the following words :-

> "The position, as a result, is that income arising from the transfer of agricultural land that falls within the terms of items (a) and (b) of sub-clause (iii) of clause (14) of section 2 falls outside the ambit of revenue derived from land and therefore, outside the ambit of

"agricultural income". Such income, therefore, is liable to capital gains tax chargeable under section 45 of the 1961 Act.

Parliament has, as aforesaid, the power to define what agricultural income is in the 1961 Act ; the amendment of clauses (1A) and (14) of section 2 thereof in the manner aforestated are, therefore, good in law. The effect is that the assessee is liable to pay capital gains tax on the sales of his lands within the municipal limits of Bina."

In view of the aforesaid legislative amendment and the decision of the Apex Court, the Tribunal rightly held that the amount received on acquisition of agricultural land was exigible to capital gains tax.

6. Accordingly, our answer to question No. 1 is in the affirmative i.e. in favour of the revenue and against the assessee.

7. Coming to question No. 2 - as regards the taxability of the amount received as solatium which formed a part and parcel of the compensation received on acquisition of agricultural land, the Tribunal relied on the decisions of this Court in Vadilal Soda Ice Factory vs. CIT, 80 ITR 711 and Hamidkhan vs. Special Land Acquisition Officer, (1982) AIR Guj. 157.

The learned counsel for the assessee is not in a position to state that the view taken by the aforesaid decisions has been reversed or overruled by the Apex Court or changed by any subsequent decision of this Court.

8. In view of the above, our answer to question No. 2 is also in the affirmative i.e. in favour of the revenue and against the assessee.

9. Coming to question No. 3, the following facts emerged from the Assessing Officer's order :-

"Only in return of income for the A.Y. 1975-76 relevant to S.Y. 2030, that the assessee has brought to the Deptt., that his land was acquired by the Land Acquisition Department. Till that there is no information on the record as seen from the copies of account filed for S.Y. 2028, 2029 relevant to A.Y. 73-74 and 74-75 where balance-sheet shows that the land in question is still owned by the assessee. Hence it has to be

> inferred that there was omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for A.Y. 1973-74 relevant to accounting year S.Y. 2028 and that by such failure income chargeable to tax escaped assessment for A.Y. 1973-74. As such the assessee's first argument that the re-opening of A.Y. 73-74 is bad in law and without jurisdiction and that section 147(b) is applicable and not 147(a), fails."

10. In view of the aforesaid facts, it is clear that the provisions of Section 147(a) were rightly invoked by the Income-tax Officer.

Accordingly, our answer to question No. 3 is also in the affirmative i.e. in favour of the revenue and against the assessee.

11. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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